IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1002 OF 1990

Bank of Maharashtra ..Plaintiffs

V/s.

Prithviraj Ratanchand Mehta & anr. ..Defendants

Ms.Anjali Risbud for the plaintiffs
Neeta Jain for defendant No.1

CORAM : A.M.KHANWILKAR, J.

DATE : 21ST SEPTEMBER, 2007

P.C.

1. None appears for defendant No.2. A decree is already passed against defendant No.1 in this suit in terms of order dated 10th September, 2007. This suit is listed today for proceeding against defendant No.2 as undefended suit. None appears for defendant No.2 inspite of service. No Written Statement has been filed on behalf of defendant No.2 so far.

2. It is the case of the plaintiffs that financial facility was extended to defendant No.1.

Defendant No.1 availed of that facilities. Defendant No.2 was drawee in respect of the suit transaction. Defendant No.1 availed a sum of Rs.1,06,601.60/-. Defendant No.1 has acknowledged the said claim of the plaintiff Bank towards unpaid bills. Defendant No.2 has neither appeared inspite of service nor filed any Written Statement. On the other hand, plaintiff has filed an affidavit of Mr.Govind S. Gulgule, Manager of the plaintiffs Bank and re-iterated case made out in the plaint. Claim of the plaintiffs is supported by documentary evidence. Indeed, plaintiffs have not filed the original documents but have stated on affidavit that the original documents are not traceable. The plaintiffs are therefore, relying on xerox copies of the concerned documents which were available in the custody of the plaintiffs and seek liberty of this Court to lead as secondary evidence. For the reasons mentioned on affidavit filed by the plaintiffs for non-availability of the original record I am inclined to accept the request of the plaintiffs to permit them to rely on the documents as secondary evidence. Plaintiff has relied on

Bill of Exchange for Rs.23,812/- dated 16th February, 1987, Bill of Exchange for Rs.21,380/- dated 16th February, 1987, Bill of Exchange for Rs.19,509/- dated 17th February, 1987, Notarial Certificate dated 27th July, 1988 and Balance cum Security Confirmation Letter dated 23rd May, 1989. The documents have been placed on record and as mentioned earlier the plaintiffs are permitted to rely on the same as secondary evidence. From all these documents and evidence of the plaintiffs it is clear that defendant No.1 was liable to pay a sum of Rs.1,06,601.60/- including interest till date of the suit. Defendant No.1 was also liable to pay interest at the agreed rate of interest 18% in terms of agreement and documents annexed by defendant No.1. Liability of defendant No.2 is coextensive with the liability of defendant No.1. As can be seen from the Notarial Certificate dated 27th July, 1988 executed by the defendant No.2. The defendant No.2 is liable to pay towards the amount arising from two Hundis referred to in the said documents which are subject matter of this suit bearing Hundi No. Bom. 106/86 dated 23rd October,

1986 for a sum of Rs.32,479.30/- and Hundi No.113 dated 27th November, 1986 for a sum of Rs.28,182.50/- respectively. Liability of the defendant No.2 is itself established from the contemporaneous record relied upon by the plaintiffs. Accordingly, plaintiffs are entitled to succeed against defendant No.2, who is jointly and severally liable along with defendant No.1 in relation to the suit claim. For the reasons mentioned earlier, in exercise of power under O.VIII, R.10 of the C.P.C. I have no hesitation in decreeing the suit even against defendant No.2 in terms of prayer clause (a) with costs. Accordingly, I proceed to pass the following order.

(i) Suit is decreed against defendant No.2 as per prayer clause (a), with costs.

(ii) Decree be drawn up accordingly.

(**A.M.KHANWILKAR, J.**)